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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 624

EARLE C. MOODY, ET AL., *Appellants*,

v.

RICHMOND M. FLOWERS, ET AL., *Appellees*.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

BRIEF FOR APPELLANTS

Opinions Below

The Majority and Dissenting Opinions of the District Court of the United States for the Middle District of Alabama are reported at 256 F. Supp. 195 (M.D. Ala. 1966), and are contained in the Jurisdictional Statement at pages 14 and 23 respectively.

Jurisdiction

Appellants brought this suit under 42 U.S.C. §§ 1983 and 1988 (17 Stat. 13 and 16 Stat. 144, as amended); 28 U.S.C. § 1343 (3) (62 Stat. 932, as amended); 28 U.S.C. § 2281, *et seq.* (62 Stat. 968); and 28 U.S.C. § 2201 (62 Stat. 964, as

amended), seeking a declaratory judgment, injunctive and other appropriate relief restraining the enforcement, operation and execution of Act. No. 9 of the 1957 Regular Session of the Legislature of Alabama (Acts of Alabama, Reg. Sess. 1957, No. 9, page 30 *et seq.*, effective May 24, 1957). Under the provisions of the above-cited Alabama Statute (hereinafter sometimes referred to as "Act No. 9"), Appellants are denied full and equal voting rights in the election of members of the governing body of Houston County, Alabama (Board of Revenue and Control, hereinafter sometimes referred to as "Board" and "Governing Board").

The opinion of the District Court of the United States for the Middle District of Alabama dismissing the action was rendered, and an order entered, on June 14, 1966, after the taking of testimony. Notice of appeal was filed on August 5, 1966. The Jurisdictional Statement was filed in this Court on October 3, 1966, and the Court noted probable jurisdiction on December 5, 1966. The jurisdiction of the Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253 (62 Stat. 926) and upheld in *Baker* v. *Carr*, 369 U.S. 186; *Gomillion* v. *Lightfoot*, 364 U.S. 339; and *Reynolds* v. *Sims*, 377 U.S. 533.

Statutes and Constitutional Provisions Involved

Act No. 9 of the 1957 Regular Session of the Legislature of Alabama, which is set forth in Appendix A, *infra* at page 22. 42 U.S. §§ 1983 and 1988 and 28 U.S.C. § 1343(3) and 28 U.S.C. §2201, which are set forth in Appendix B, *infra* at page 29. The Alabama Constitution of 1901, Article I, Sections 2 and 33, and Article VIII, Section 177, which are set forth in Appendix C, *infra* at page 31. The United States Constitution, Amendment XIV, Section 1, which is set forth in Appendix D, *infra* at page 33.

Question Presented

Whether the Fourteenth Amendment's Equal Protection Clause prohibits the Alabama Legislature from creating an elective county governing board which possesses legislative and other powers and providing for the election of members thereto in a manner whereby approximately 61% of the county's population is accorded only 20% representation (1 member) on the 5-member governing board.

Statement of the Case

Appellants, as citizens, taxpayers and voters of the United States and the State of Alabama, Houston County, City of Dothan, brought this action, individually as voters and in their official capacities and on behalf of others similarly situated, against state and county election officials and members of the Houston County Governing Board (Appellees) to invalidate and to enjoin the enforcement and operation of an Alabama Statute, which Statute permanently districted Houston County and apportioned the Houston County Governing Board on an "area" basis in flagrant disregard of the County's population and number of qualified voters and in violation of Appellants' rights to an equal vote under the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution.

Appellants further specifically requested that the District Court order at-large primary and general elections of the members of said Board until such time as the Alabama Legislature shall redistrict and reapportion the Board on a population basis.

The District Court by a 2-1 vote denied Appellant voters any relief and dismissed the action.

The Alabama Statutory Formula

Under Act No. 9, adopted in 1957, Houston County, Alabama, is permanently divided into 14 election precincts or "beats". These beats in turn comprise 5 districts. The qualified voters of each district are entitled to elect one member to the County Governing Board, a unicameral body, and each member may cast one vote on all matters before the Board.[1] The number of qualified voters in each of the 5 districts as of 1960 is as follows:

District No. 1 (comprising beats 1, 2, and 4)	1,224
District No. 2 (comprising beats 5, 6, 7, and 11)	1,722
District No. 3 (comprising beats 10, 12, and 14)	1,450
District No. 4 (comprising beats 8, 9 and 13)	1,368
District No. 5 (comprising beat 3, City of Dothan)	9,046

A map of Houston County showing the division thereof into beats is attached to the Complaint as Exhibit 2. (R. 27).

The Extent of Voter Inequality Under Act No. 9

According to official United States census figures for 1960, the total population of Houston County was 50,718. The total population of the City of Dothan (District No. 5, beat 3) was 31,440, said population of Dothan comprising approximately 61% of the total population of Houston County. Population figures for each of the 5 districts are unavailable. However, the population of each district approximates proportionally the number of registered qualified voters within each district. (R. 57).

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[1] The Judge of Probate of Houston County, Alabama, serves as *ex officio* chairman of the Board but lacks the power to vote upon any matter before the Board unless there is a tie vote among the Board members present and voting.

It was stipulated by counsel for both sides that the total assessed value of property in Houston County for *ad valorem* taxes in 1965 amounted to $30,621,030.00, of which amount property within the City of Dothan accounted for $21,217,120.00, or about 69% of the total assessed value of property in Houston County. (R. 12, 75).[2]

The extent of inequality of votes between the favored rural and disfavored urban voters of Houston County is clearly shown by the following undisputed facts and figures:

(1) The urban residents of the City of Dothan represent about 61% of the total population of Houston County, but are accorded only 20% representation (1 member) on the 5-member County Governing Board.

(2) Approximately 27% of the County's rural qualified voters can elect a majority of members to the Board and thereby possess and exercise perpetual veto power over the will of the majority of the County's urban voters.

(3) A rural voter who lives in District No. 1 has nearly 7½ times the voting power as his disfavored urban counterpart who happens to live in the City of Dothan, District No. 5.

(4) The number of qualified voters represented by the Board member in District No. 5, the City of Dothan (9,046), exceeds the number of qualified voters in an "ideal" or average[3] County district (2,962) by over 205%.

(5) The number of voters in Dothan (9,046) exceed

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[2] In the Court below counsel for the plaintiffs and defendants stipulated to the validity and accuracy of all factual allegations in the Complaint. (R. 75).

[3] An "ideal" or average County district is arrived at by dividing the total number of qualified voters in Houston County (14,810) by 5, the number of County districts.

the number of voters in Districts 1 through 4, as averaged out, (1,441) by about 527%.

Some Harmful Effects Caused by the Unequal Treatment of Voters

1. *Domination of the County Governing Board by a minority of the County's rural population has handicapped responsible local government.* There is general agreement that in the federal system a strong national interest exists in encouraging vigorous and responsible local as well as state government. H. R. Rep. No. 2533, 85th Cong., 2d Sess. 47 (1958). The decline of county governments through their failure to solve the problems of an urbanized society and the potential value of counties is also generally recognized.[4] Report of the Commission on Intergovernmental Relations (1955).

The urban voters of Houston County have suffered from minority rural domination of the County Governing Board. In testimony at the hearing held by the Court below it was brought out that the City of Dothan had to come to the financial aid of the County involving such matters as the County Health Department and the County Memorial Library. (R. 97-98). There was also evidence to the effect that not over 5% of the road construction and maintenance done by Houston County in recent years has been inside the corporate limits of the City of Dothan. (R. 90-91).

The considerable revenue received by the County resulting from state imposed taxes collected by the County comes primarily from the residents of the City of Dothan where the lion's share of industries and businesses are lo-

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[4] County governments operate throughout the United States, except for the District of Columbia, Connecticut, Rhode Island and limited portions of 13 other states. U. S. Bureau of Census, *Governing Boards of County Governments: 1965*, p. 1.

cated.[5] (R. 115-116; 118-119). And, as previously stated, the vast dollar amount of taxable property in the County is located within Dothan. The discriminatory taxation and distribution of County funds will not cease and the revitalization of the County government will never begin so long as the rural minority stranglehold on the County government is not broken.

All Attempts to Obtain a Fair and Equitable Apportionment of the County Governing Board Have Failed

The voters of Houston County do not have the power of initiative or referendum with respect to the redistricting or reapportioning of the Governing Board. Likewise, the Board lacks the power to redistrict and reapportion itself. Such action must come from the Alabama Legislature or not at all. In an effort to get the Alabama Legislature to act on the matter, the Mayor of the City of Dothan wrote a letter to the senator and to the representative representing Houston County in the Alabama Legislature requesting them to introduce legislation in the Alabama Legislature correcting the gross malapportionment of the Houston County Board. (R. 828-35). However, no remedial legislation was forthcoming, although one regular session and three special sessions of the Legislature were held after said letters were written and delivered.

Prior and subsequent to the filing of the Complaint in this case, members of the Dothan Governing Board met with

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[5] According to United States Census figures for 1962, about 41.9% of the average county's revenue in Alabama comes from the State government and over 45% of the average county's revenue comes from property and other taxes. *Census of Governments: 1962, Finances of County Governments*, Vol. IV, No. 2 (1964), pages 10-11.

County governments in the United States received $8.7 billion in revenue during fiscal year 1962, and expended 8.9 billion. This increase in revenue amounted to a 48% increase in 1962 as compared with the year 1957, having increased at an average annual rate of 8.2% during this period. *Id.* at 1.

members of the County Governing Board in an attempt to secure an agreement for a more representative type of apportionment of the County Board for the residents of Dothan. These conferences ended in failure. (R. 110-111, 129-130). Thus, it is clear that unless judicial assistance is provided to stimulate the required corrective action, the discrimination in voting rights will continue, hopelessly, and will grow in proportion with the current trends of population growth.

Summary of Argument

I

1. Appellant voters brought this action in their individual capacities alleging violation of the Equal Protection Clause of the Fourteenth Amendment as a result of an Alabama Statute which seriously dilutes the weight of their votes, as compared with rural voters, in the election of members to the Houston County, Alabama, Governing Board.

The Court below had jurisdiction to hear this case and to grant the relief prayed for in the Complaint, and this Court has jurisdiction to hear this Appeal. *Baker* v. *Carr*, 369 U.S. 186; *Gomillion* v. *Lightfoot*, 364 U.S. 339; *Reynolds* v. *Sims*, 377 U.S. 533.

2. The right of an individual to have his vote counted equally constitutes a fundamental, personal right protected by the Equal Protection Clause of the Fourteenth Amendment. *Reynolds* v. *Sims*, 377 U.S. 533, 561; *Baker* v. *Carr*, 369 U.S. 186. Judicial protection of this fundamental right of voter equality transcends the imaginary boundaries of the internal governmental structure within a state, so as to be equally applicable to the determination of the validity of the apportionment scheme of a municipal body, such as

the Governing Board of Houston County, Alabama. *Gomillion* v. *Lightfoot*, 364 U.S. 339, 344-347.

(a) The Fourteenth Amendment applies to every political subdivision or agency of a state, including a county, the same as it applies to the state proper. *Cooper* v. *Aaron*, 358 U.S. 1, 16-17; *Standard Computing Scale Company* v. *Farrell*, 249 U.S. 571, 577; *Gomillion* v. *Lightfoot*, 364 U.S. 399, 344-347. Under the Equal Protection Clause, the Alabama Legislature could not create a county governing body, such as the Houston County Governing Board, and provide for racial or religious discrimination in the election of members thereto. The same reasoning applies to the discrimination practiced in this case—voter discrimination based on geography.

While the power of a state over its political subdivisions is considerable, such power is not absolute and unrestricted by the United States Constitution. *Gomillion* v. *Lightfoot*, 364, U.S. 339, 344-347.

3. In violation of the Equal Protection Clause of the Fourteenth Amendment, the Alabama Legislature has affirmatively, purposefully and systematically denied Appellants an equal-weighted vote in the election of County Governing Board members by the adoption and maintenance of Act. No. 9 as the basis of districting and apportioning the Governing Board.

(a) The inequality practiced in this case is effected by geographically segregating appellants and other urban voters in the County from rural voters and discriminating against the former by diluting the value of their votes in comparison with the favored rural voters.

4. The Governing Board of Houston County is an elective, representative body by express statutory design. As an elective, representative governmental body possessing

legislative and other powers, the Board should represent equally all of the population of Houston County. Under the Equal Protection Clause, a state statute granting voting rights cannot operate with an unequal hand giving some voters more voter power than others. One rule of law cannot be applied to voters in state elections and another to voters in local elections. The Fourteenth Amendment does not provide such a double standard, and Act No. 9 is therefore unconstitutional.

5. This Court's state reapportionment decisions have been implemented in all fifty of the states. As a result, there has been a public reawakening of the importance of state government in our federal system. There is also an urgent need for the revitalization of county government. Indeed, with the spur of judicial action across the country, numerous local governing bodies have been reapportioned and are taking concrete measures to modernize their municipal governments. A decision by this Court sanctioning malapportionment on the sub-state governmental level would effectively halt this movement to make municipal government more responsive to the needs and desires of the people.

ARGUMENT

I

This Court Has Jurisdiction.

This is a voting rights case which Appellant voters brought in their individual capacities under the Civil Rights Acts and the Declaratory Judgments Act. (Appendix B, *infra* at page 29). The Court has jurisdiction to review the decision of the District Court below by direct appeal under 28 U.S.C. §1253 (62 Stat. 926).

This case is similar to *Baker* v. *Carr*, 369 U.S. 186, 237,

and a logical extension of the voter equality principles enunciated therein, where the Court held that Federal District Courts have jurisdiction over voting rights cases; that such a complaint states a justiciable cause of action; and that voters have standing to challenge a denial of their voting rights through dilution as a result of state action.

In *Gomillion* v. *Lightfoot*, 364 U.S. 339, the plaintiff voters filed a complaint in Federal Court alleging that the Alabama Legislature had changed the boundaries of the City of Tuskegee to eliminate practically all of the Negroes residing in Tuskegee. Plaintiffs contended that such action on the part of the State deprived them of the right to vote in municipal elections. This Court held that it had jurisdiction to protect and enforce the voting rights there involved.

Subsequent to *Gomillion* v. *Lightfoot* and *Baker* v. *Carr*, this Court decided a series of voting rights cases involving state legislatures which further support this Court's jurisdiction of this Appeal. *Reynolds* v. *Sims*, 377 U.S. 533; *WMCA* v. *Lomenzo*, 377 U.S. 633; *Davis* v. *Mann*, 377 U.S. 678; *Roman* v. *Sincock*, 377 U.S. 695; and *Lucas* v. *Colorado General Assembly*, 377 U.S. 713.

Accordingly, the lower Court had jurisdiction to hear this case and power to grant the relief prayed for in the Complaint, and this Court has jurisdiction to hear this Appeal.

II

The Equal Protection Clause Requires Equal Apportionment of the Houston County Governing Board, the Same as It Requires Equal Apportionment of the Alabama Legislature.

The Equal Protection Clause of the Fourteenth Amendment requires that the Houston County Governing Board meet the same basic constitutional standards of voter equal-

ity as is required of the Alabama Legislature. This conclusion is supported by fairness, logic and the overwhelming majority of courts which have passed upon the precise issue.[6] In *Reynolds* v. *Sims*, 377, U.S. 533, 566, this Court emphasized that "diluting the weight of votes [in state elections] because of place of residence impairs basic constitutional rights, . . ." And in *Cooper* v. *Aaron*, 358 U.S. 1, 16-17, the Court declared:

> "The controlling legal principles are plain. The command of the Fourteenth Amendment is that no 'State' shall deny to any person within its jurisdiction the equal protection of the laws. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or the officers or agents by whom its powers are exerted,

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[6] *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. (D. Md. 1964), *aff'd*, 352 F. 2d 123 (4th Cir. 1965) (City Council); *Davis* v. *Dusch*, 361 F. 2d 495 (4th Cir. 1966) (City Council); *Damon* v. *Lauderdale County Election Comm'rs*, Civil No. 1197-E (S.D. Miss. Oct. 21, 1964) (informal opinion) reprinted in 13 National Municipal League, Court Decisions on Legislative Reapportionment 139 (1965) (County Board of Supervisors); *Mauk* v. *Hoffman*, 87 N.J. Super. 276, 209 A. 2d 150 (Ch. Div. 1965) (County Board of Freeholders); *State ex rel. Sonneborn* v. *Sylvester*, 26 Wis. 2d 43, 132 N.W. 2d 249 (1965) (County Board of Supervisors); *Seaman* v. *Fedourich*, 16 N.Y. 2d 94, 209 N.E. 2d 778 (1965) (City Council); *Bailey* v. *Jones*, 139 N.W. 2d 385 (S. Dak. 1966) (County Commissioners); *Bianchi* v. *Griffing*, 217 F. Supp. 166, 238 F. Supp. 997 (E.D. N.Y. 1965), *appeal dismissed*, 382, U.S. 15 (County Board of Supervisors); *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30 (W.D. Pa. 1965) (School Board); *Montgomery County Council* v. *Garratt*, No. 227 (Md. Ct. App. Aug. 4, 1966) (County Council); *Hanlon* v. *Towey*, Nos. 40084, 40203 (Minn. 1966), 142 N.W. 2d 741 (1966) (County Board of Commissioners); *Martinolich* v. *Dean*, 256 F.Supp. 616 (S.D. Miss. 1966) (County Board of Supervisors); *Armentrout* v. *Schooler*, 35 U.S.L. Week 2345 (Mo. Sup. Ct., Dec. 14, 1966) (City Council); *Morris* v. *Board of Supervisors of Herkimer Co.*, 273 N.Y.S. 2d 453 (N.Y. Sup. Ct., 1966); (County Board of Supervisors); *Wiltsie* v. *Board of Supervisors of Anyo County*, 54 Cal. Rpts. 320, 419 P. 2d 4406 (1966) (County Governing Board); *Brouwer* v. *Bronkema*, 377 Mich. 616, 141 N.W. 2d 98 (1966) (County Board of Supervisors).

> shall deny to any person within its jurisdiction the equal protection of the laws. . . . Thus, the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the law; whatever the agency of the State, taking the action . . . or whatever the guise in which it is taken."

The Houston County Governing Board is a political subdivision of the Alabama Legislature created by the Legislature to aid in the administration of the government. And the Board can act only within the limits of the power delegated to it by the Legislature or fixed by the Alabama Constitution. *Moore* v. *Walker County*, 236 Ala. 338, 185 So. 175, 177 (1940); *Kendrick* v. *State*, 256 Ala. 206, 54 So. 2d 442, 444 (1952). Accordingly, under the decisions of this Court, any restriction imposed by the Federal Constitution on the Alabama Legislature is equally applicable to its county governing bodies to which are delegated important legislative and other powers.[7] The Court made this proposition clear in *Standard Computing Scale Company* v. *Farrell*, 249 U.S. 571, 577, where it stated:

> "For the protection of the Federal Constitution applies, whatever the form in which the legislative power

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[7] The Houston County Governing Board possesses the important legislative powers of taxation and eminent domain. In addition, the Board has jurisdiction with regard to the establishment, change or discontinuance of roads, bridges, causeways, ferries, and stock districts within the County; power to appropriate funds for various public and governmental purposes, as well as other powers of varying degrees of importance. Code of Ala., Tit. 12, §§ 11, 12, 16-19, 21-22, 177, 181, 185, 186, 191, 197, 300; Tit. 29, § 31 and Tit. 51 § 71 (1940) (Recomp. 1958) (1965 Supp.); Act No. 193, Local Acts of Alabama, Extra Session of 1936, pp. 97-98; Section 215 of the Constitution of Alabama.

The amount of both general and special *ad valorem* taxes which the Board is authorized to levy for the expenses of the County each year is left to the Board's sole discretion, subject to the maximum rate as set by the Alabama Constitution. Also, the exercise of the tremendously important power of condemnation, within the constitutional and statutory limits therefor, is left to the Board's sole discretion.

> of the state is exerted; that is, whether it be by constitution, an act of the legislature, or an act of any subordinate instrumentality of the state exercising delegated legislative authority, like an ordinance of a municipality or an order of a commission."

To borrow an analogy from private law, an agent cannot do that which his principal is unauthorized to do. The principal in the instant case is the Alabama Legislature, and the agent is the Houston County Governing Board. As a result of this Court's state reapportionment decisions, the Alabama Legislature cannot constitutionally institute and maintain a system of malapportionment in its own State Legislature. Therefore, it should not be permitted to create by statute an elective-form of county government as an agency of the State and provide that the urban and rural voters of the county are to have different degrees of voting power in electing members to the county governing body. This is what the Alabama Legislature has done by the enactment of Act No. 9. That the Equal Protection Clause makes no distinction between voter equality on the state and county levels of government was aptly stated as follows in *Seaman* v. *Fedourich*, 16 N.Y. 2d 94, 262 N.Y.S. 444, 449 (1965):

> "It is axiomatic that local governmental units are creations of, and exercise only those powers delegated to them by the state . . . and certainly if the latter may exercise its legislative powers only in a body constituted on a population basis, any general elective municipal organ to which it delegates certain of its powers must, by a parity of reasoning, be subjected to the same constitutional requirement."

A. *A State Cannot Use its Political Subdivision as an Instrument for Denying an Individual His Constitutional Right to an Equally Weighted Vote.*

While the power of a state over its political subdivisions is extensive and its breadth and importance is recognized by the Court, such power is not absolute and is not unlimited by the Federal Constitution. *Gomillion* v. *Lightfoot*, 364 U.S. 399. In the *Gomillion Case*, it was claimed by the respondents that Alabama's power to establish, destroy, reorganize or expand its political subdivisions was not limited by the Federal Constitution under *Hunter* v. *City of Pittsburgh*, 207 U.S. 161. The Court, in holding that the Alabama statute was violative of the Fifteenth Amendment,[8] made it abundantly clear that the power of a state cannot be employed to circumvent a federally protected right. The Court stated:

> "Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution."
>
> • • • • • • •
>
> "The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of realignment of political subdivisions. 'It is inconceivable that guarantees imbedded in the Constitution of the United States may thus be manipulated out of existence.'"
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> • • • • • • •

[8] Mr. Justice Whittaker was of the view (concurring opinion) that the conduct of the state in "fencing out" a group of Negro citizens from voting in municipal elections was an unlawful segregation in violation of the Equal Protection Clause of the Fourteenth Amendment, rather than the abridgment of the right to vote under the Fifteenth Amendment. *Gomillion* v. *Lightfoot*, 364 U.S. 339, 349.

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. . . ." (364 U.S. at 344-347)

Addressing itself directly to the *Hunter* case, the Court declared:

> ". . . [A] correct reading of the seemingly unconfined dicta of Hunter and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations. . . . [T]he Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution." (364 U.S. at 345-346)

The right of an individual to have his vote counted equally and not impaired on account of his residence is a basic constitutional right. As was stated in *Lucas* v. *Colorado General Assembly*, 377, U.S. 713, 736, "An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of the State's electorate. . . ." Under the rule of the *Gomillion* Case, the protection of a constitutional right takes precedence over the power of a state over its municipalties. If this were not so, the Alabama Legislature would be free to use its created political subdivisions as instruments of various forms of discrimination, racial and otherwise.

III

When a State Law Grants a Person the Right to Vote, Each Vote Must Be Counted Equally.

In this case the Alabama Legislature has prescribed by statute that members of the Houston County Board are to be elected. Therefore, the issue involved herein is not concerned with whether the voters of Houston County have a constitutional right to an elective system of county government. It has been stated that:

> "The state can, of course, constitutionally refuse to set up an elective process for the selection of municipal officials; it can appoint them all. But, if it chooses an elective method, the Fourteenth Amendment imposes certain limits on its use of that method." Note, *Reapportionment*, 79 Harv. L. Rev. 1226, 1271 (1966).

The Governing Board of Houston County is designed to be controlled by the voters of the geographical area over which the County has jurisdiction. The Board members are not appointed by or responsible to the Alabama Legislature. They are elected by and responsible to the people of Houston County. Districting and apportioning schemes, such as that involved in this case, which give the same number of representatives to unequal numbers of constituents have an identical effect as state laws providing that certain of the voters could vote two, five or ten times while voters living elsewhere within the state vote only once. An unequal voice in elections and a complete denial of participation in an election are of the same offensive order and differ only in degree. As this Court stated in *Gray* v. *Sanders*, 372 U.S. 368, 379-380, "The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic

qualifications." Again, in *Wesberry* v. *Sanders*, 376 U.S. 1, 18, involving the constitutionality of congressional districting plans enacted by state legislatures, the Court declared that:

> ". . . . [O]ur Constitution's plain objective [was that] of making equal representation for equal numbers of people the fundamental goal. . . . That is the high standard of justice and common sense which the Founders set for us."

Once granted, the right to vote means a right to an equal vote and it becomes a fundamental, personal right indigenous to self-government and preservative of all other civil and political rights. Protection of a rural, minority interest does not mean the minority should be in a position to veto the desires of the majority. This proposition was clearly emphasized in *Reynolds* v. *Sims*, 377 U.S. 533, 566, where the Court stated:

> "Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, *Brown* v. *Board of Education*, 347 U.S. 483 . . . or economic status, *Griffin* v. *Illinois*, 351 U.S. 12. . . . Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of state legislatures. And the democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future."

When, as here, a governing body exercises powers of government in the name of all the people represented by

the governing body, the voters are entitled to have their votes counted equally.

IV

The Revitalization of Local Government, as Well as State Government, Depends in Large Measure on Attaining a System of Equal Representation.

Notwithstanding such unfounded cries as "judicial upheaval" and "political thicket", all fifty of the states have redrawn their boundary lines to ensure greater voter equality in the state legislatures. *State Legislatures Progress Reporter,* National Municipal League, Vol. 2, No. 4 (Jan. 1967), p. 1. It has been asserted by many writers on the subject that the reapportioned state legislatures have played and will play a substantial role in rejuvenating our state governments. National Civic Review, *A Reapportioned State, Colorado Legislator Highlights Achievements of Equitably Redistricted General Assembly,* Vol. LV, No. 2 (Feb. 1966); The Reader's Digest, *Our Horse-and—Buggy State Legislatures,* (May, 1965) p. 49; *Apportionment of State Legislatures,* Advisory Commission on Intergovernmental Relations (Dec. 1962), pages 23 *et seq.* Similarly if local government is to be responsive to the needs and desires of the people, the makeup of the governing bodies of our municipalities must be fairly representative of the people.

In a nation founded upon self-government, it is essential that local government—the governmental unit closest to the people—be healthy, effective and vigorous. Arnold J. Toynbee has written: "One cause of the fall of the Roman Empire was the decay of local self-government." Toynbee, *Lessons for Us From Athens and Rome,* New York Times Magazine, (Jan. 31, 1960), p. 60. Across the Country there has been a public awakening to both the present inade-

quacies and the potential value of counties. Advisory Commission on Intergovernmental Relations, *Alternative Approaches to Governmental Reorganization in Metropolitan Areas* (1962) p. 84; *Report of the Commission on Intergovernmental Relations* (1958); *Report of the President's Commission on National Goals* (1960). One commentator has stated:

> "As a result of the Supreme Court decisions on apportionment, this country is now faced with a great challenge and opportunity to re-examine its form of local government and to improve them sufficiently to meet the growing demands thrust upon them" Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 Col. L. Rev. 21, 49 (1965).

The revitalization of local and state government which is so urgently needed and which is now in progress will be stopped "dead in its tracts" should this Court sanction voter inequality on the municipal level of government.

Conclusion

The Fourteenth Amendment has been a constant protector of voting rights against discriminatory governmental action. As a result of the decisions of this Court enforcing the Fourteenth Amendment, positive and constructive measures have been taken by all fifty of the states in the legislative apportionment area. Now the movement has begun and is well under way for fair and equal representation in elective, sub-state governmental bodies, such as the Houston County Governing Board. See, *e.g.*, *National Civic Review*, Vol. LVI, No. 1 (Jan. 1967), p. 28. This movement to change "country" government to "common" government, to change unresponsive government to responsive

government, would be halted if the decision of the Court below is allowed to stand. The Alabama Statute involved herein represents a flagrant subversion of the population principle and, therefore, cannot be sustained as constitutional on any basis.

The judgment of the Court below should be reversed and the case remanded with a direction to grant the relief sought in the Complaint. Alternatively, the judgment of the lower Court should be reversed and the case remanded with a direction that the District Court retain jurisdiction and stay the proceedings to allow the Alabama Legislature a reasonable time to adopt a valid reapportionment plan for the Houston County Governing Board.

Respectfully submitted,

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APPENDIX A

Act No. 9 of the 1957 Regular Session of the Legislature of Alabama (Acts of Alabama, Reg. Sess. 1957, No. 9, p. 30) (effective May 24, 1957):

Act No. 9 S. 93—Flowers

AN ACT

To create and establish a Board of Revenue and Control for Houston County, Alabama, to be composed of five district Commissioners and the Judge of Probate who shall serve as ex officio chairman, in place of the board of revenue now existing in said County, and abolishing said board of revenue of Houston County; to provide for the four members now serving as commissioners on the board of revenue to hold office on the Board of Revenue and Control until their terms shall expire and their successors elected and qualified; to provide for compensation of the members and the manner of payments; to divide the County into five districts by adding the fifth district and prescribing the method by which this additional commissioner shall be appointed; to provide for the election of the district commissioners prescribing their required qualifications, terms of office, duties and compensation, and the numbered precincts in each district so created and established; to provide for selection of one of the commissioners to serve as vice-chairman of the board; to prescribe a quorum for the purpose of transacting business of the county; providing for appointments to fill vacancies on the board; prescribing bonds for all commissioners and the Judge of Probate as ex officio Chairman of the board; to provide for the appointment of a county engineer and defining his duties, power and authority and prescribing a maximum salary for the position; to provide for powers and authority of board members and to prescribe regular meeting dates of the board; to provide procedure for the making of contracts for construction, and/or the purchase of road and bridge material, teams, tools, machinery, supplies or equipment; to provide for repeal of all laws in conflict with this act, and especially repealing certain acts designated.

Be It Enacted by the Legislature of Alabama:

Section 1. There is hereby created and established a Board of Revenue and Control for Houston County, Alabama, effective on and after the passage and approval of this bill or act and it becomes a law. The Board of Revenue and Control shall be composed of the Judge of Probate who shall serve as ex officio Chairman, but who shall have no power or authority to vote upon any questions or business before the Board in regular, special or called sessions thereof, until there shall first be a tie vote registered among the District Commissioners present and voting, and five (5) District Commissioners, four (4) of whom are presently serving as Commissioners of Districts one (1) to four (4), respectively, of the Board of Revenue, and who shall hold office and represent the respective districts assigned to them by provisions of Section 2 of this act, as District Commissioners of the Board of Revenue and Control until their successors are elected and qualified. Each of said members of the Board of Revenue and Control shall receive as compensation the sum of $1,200.00 annually, except the Judge of Probate who as ex officio Chairman shall not receive additional compensation, and shall be paid in equal monthly installments out of the general funds of the County on warrants drawn by the Judge of Probate.

Section 2. That Houston County, Alabama, is hereby divided into five (5) Board of Revenue and Control Districts, as follows: District Number 1 shall embrace and be composed of Beats Number 1, 2, and 4 and shall be represented by the incumbent Commissioner, H. A. Hollis; District Number 2 shall embrace and be composed of Beats Number 5, 6, 7, and 11 and shall be represented by the incumbent Commissioner, F. C. Jackson; District Number 3 shall embrace and be composed of Beats Number 10, 12, and 14 and shall be represented by the incumbent Commissioner, W. Harvey Hicks; District Number 4 shall embrace and be composed of Beats Number 8, 9, and 13 and shall be represented by the incumbent Commissioner, G. D. Raley; and District Number 5 shall embrace and be composed of Beat Number 3. The Governor is authorized and empowered to appoint a member of the Board of Revenue and Control, as

hereby created, effective upon the bill or act becoming a law, to serve as District Commissoner of District Number 5, and who shall serve until his successor is elected at the General Election to be held on the first Tuesday after the first Monday in November, 1958, and becomes qualified, and who shall receive as compensation the sum of $1,200.00 per annum payable in the same manner and from the same funds of the County with which the other Commissioners are paid. One member of said Board of Revenue and Control hereby created shall hereafter be nominated and elected by the voters of each of the above-numbered districts, and he shall have been a resident of and a qualified elector in the District for a period of two years time immediately preceding the General Election to be held on the first Tuesday after the first Monday in November, 1958, and shall continue to reside therein during his continuance in office; and the members elected shall assume the duties of their office on the first Monday after the second Tuesday in January, 1959, following their election, and shall hold office for a period of four (4) years and until their successors are elected and qualified. Candidates for membership on the Board of Revenue and Control for Houston County, Alabama, shall be nominated by the voters of his respective district in the Primary next preceding the General Election at which time they shall be elected by the voters of his respective district.

Section 3. That the five (5) District Commissioners hereinabove provided for shall, immediately upon assuming office as Commissioners of the Board of Revenue and Control of Houston County, Alabama, elect one from its membership as Vice-Chairman of the Board to act, in the absence of the Judge of Probate as ex officio Chairman, as presiding officer of the said Board of Revenue and Control and who shall, while acting in the official capacity of Vice-Chairman of said Board, have and exercise all of the powers and authority vested by law in the Judge of Probate as ex officio Chairman of the said Board; and the District Commissioner so elected Vice-Chairman shall serve as such until the end of his term of office and shall not receive additional compensation for this additional duty. The presence of three District Commissioners, or of two District Commissioners

and the District Commissioner elected to serve as Vice-Chairman of the Board shall constitute a quorum for the transaction of official business at all regular, special or called meetings held.

Section 4. That in case of a vacancy on the Board of Revenue and Control, such vacancy shall be filled by appointment made by the Governor of Alabama, and the person appointed shall hold office for the remainder of the term and until his successor has qualified.

Section 5. That each District Commissioner of the Board of Revenue and Control shall, before entering upon his official duties, be required to furnish a bond, payable to the State of Alabama in the sum of $5,000.00 for the faithful performance of his duties; and the Judge of Probate, as ex officio Chairman of said Board shall likewise furnish a bond in the same sum, and all such bonds shall be approved by the Judge of the Circuit Court of the Twentieth Judicial Circuit of Alabama.

Section 6. That the Board of Revenue and Control shall appoint a County Engineer who shall be qualified to practice engineering and land surveying in the State of Alabama, and whose salary shall be fixed by the Board at an amount not to exceed $7,500.00 per annum payable in monthly installments; and who shall serve at the pleasure of the Board; and provided further that the County Engineer, with the approval of the Board of Revenue and Control, shall employ and fix the compensation of attorneys, all agents, assistants, supervisors, clerical workers, overseers, workmen, and laborers required for the construction, maintenance and repairs of all buildings, roads, and bridges within the County, and shall, with the counsel, assistance and approval of said Board, purchase all necessary road machinery, material, teams, tools, supplies, and equipment as hereinafter provided in Section 8 used in and about the work on the County buildings, roads and bridges.

Section 7. That there is hereby conferred upon said Board of Revenue and Control of Houston County, Alabama, and the members thereof, all of the general authority, power and duties now provided, or which may hereafter be provided to Boards of Revenue or Commissioners Courts,

under the general laws of the State of Alabama, and amendments thereto not inconsistent with the provisions of this Act, and for the acts of said Board equal, several and joint liability are hereby fixed for the members thereof. And in addition to the above duties and powers set out, the members of the Board of Revenue and Control shall in addition to the regular monthly meeting of the Board to be held on the second Monday of each month, they shall be required and it will be their additional duty to hold a meeting of the Board of Revenue and Control on the fourth Monday in each month, and the District Commissioners shall be responsible at all times for making proper inspections of roads and bridges, and other County property lying within his respective district.

Section 8. That no purchase or contract to purchase any road or bridge material, teams, tools, machinery, supplies or equipment shall be made, or any contract for the construction, maintenance or repair or any road let, either by the Board of Revenue and Control or the County Engineer, if the amount involved or the value thereof exceed $25.00 except to the lowest bidder, and where the amount of purchase or contract to be let, is in excess of $25.00 and not greater than $200.00 the Board of Revenue and Control shall have a notice posted on the bulletin board in front of the Courthouse of Houston County, Alabama five (5) days prior to the meeting at which said purchase is to be made, and if the amount of purchase to be made or contract to be let be in excess of $200.00 notice must be given that bids will be received for such purchase or contract by advertising same for a period of twenty (20) days, by publication for once a week for two (2) consecutive weeks in a newspaper published in Houston County, Alabama. And, in addition to the above notice or notices, if amount be in excess of $200.00 the Chairman of said Board of Revenue and Control shall give written notice by registered mail with return receipt requested of such contemplated purchase or purchases to at least three (3) merchants or dealers in the goods or materials to be purchased, and where notice of any contract to let, to at least three (3) contractors

engaged in the type of work contemplated. Such notice or notices, together with return receipts, must be recorded in and become a part of the minutes of the Board of Revenue and Control of Houston County, Alabama. Provided, however, in case of emergency, for the purchase of machinery parts, no advertisement shall be required as above stipulated. Any and all contracts made and entered into or purchases made by the Board of Revenue and Control, except for purchases of emergency parts, in violation of terms of this section shall be null and void, and it shall be unlawful for the Probate Judge to issue warrants in payment of same. The Probate Judge must forthwith issue all warrants in payment of all lawful contracts as herein provided.

Section 9. That the compensation for the District Commissioners elected in a manner as hereinabove provided for in the General Election to be held on the first Tuesday after the first Monday in November, 1958, and who will assume the duties of their office on the first Monday after the second Tuesday in January, 1959, shall be $1,800.00 each per annum payable in equal monthly installments out of the general funds of the County on warrants drawn by the Judge of Probate. Provided, however, that the Judge of Probate, as ex officio Chairman of the Board of Revenue and Control shall not receive any additional compensation for his duties in this capacity.

Section 10. That all laws, both general, special or local, and parts of laws in conflict with the provisions of this Act are hereby expressly repealed, and especially repealing House Local Bill No. 378, approved July 23, 1931, by the Governor of Alabama, and House Local Bill No. 533, approved June 27, 1935, by the Governor of Alabama, and House Local Bill No. 1013, approved September 13, 1935, by the Governor of Alabama, and House Local Bill No. 1014, approved September 13, 1935, by the Governor of Alabama, and Senate Local Bill No. 294 set out on pages 133, 134, 135, and 136 in Local Acts of Alabama in the year 1939, and which became a law under Section 125 of the Constitution, and House Local Bill No. 599, pages 931,

932, 933 and 934, General and Local Acts of Alabama 1949, approved September 19, 1949 by the Governor of Alabama.

Section 11. That if any section, provision, clause or portion of this Act shall be declared, by court of competent jurisdiction, to be invalid or unconstitutional, same shall not be held to effect any other section, provision, clause or portion of this Act, but same shall remain in full force and effect.

Section 12. That this Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved May 24, 1957.

Time 11:12 A. M.

APPENDIX B

42 U.S.C. § 1983:

> *"Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 U.S.C. § 1988:

> *"Proceeding in vindication of civil rights.* The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty."

28 U.S.C. § 1343:

"*Civil rights and elective franchise.* The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. . . ."

DECLARATORY JUDGMENTS ACT

28 U.S.C. § 2201:

"Creation of remedy. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

28 U.S.C. § 2202:

"Further relief. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

APPENDIX C

Article I, Section 2, of the Constitution of Alabama of 1901:

> "That all political power is inherent in the people and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient."

Article I, Section 33, of the Constitution of Alabama of 1901:

> "The privilege of suffrage shall be protectd by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct."

Article VIII, Section 177, of the Constitution of Alabama of 1901:

> "Every male citizen of this state who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this constitution, shall have legally declared his intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens."

Code of Ala., Tit. 17, Section 12 (1940) (Recomp. 1958):

"Qualification of elector to vote. Every citizen of this state who is a citizen of the United States and every resident of foreign birth, who, before the ratification of the present Constitution of the state, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in Section 15 of this title, and who shall have resided in this state at least one year, in the county six months, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector, and shall have paid, on or before the first day of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the next two preceding years, shall be an elector, and shall be entitled to vote at any election by the people."

APPENDIX D

UNITED STATES CONSTITUTION, Amendment XIV, § 1:

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.